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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-520-804]

Certain Steel Nails from the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that certain steel nails (nails) from the United Arab Emirates (UAE) are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the “Suspension of Liquidation” section of this notice. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Michael A. Romani, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0665 and (202) 482-0198, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, Mid Continent Nail Corporation (the petitioner) filed an antidumping petition concerning imports of nails from the UAE. *See* the Petition for the

Imposition of Antidumping Duties on Certain Steel Nails from the United Arab Emirates, dated March 31, 2011 (the petition).

On April 27, 2011, the Department initiated the antidumping duty investigation on nails from the UAE. *See Certain Steel Nails From the United Arab Emirates: Initiation of Antidumping Duty Investigation*, 76 FR 23559 (April 27, 2011) (*Initiation Notice*).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the date of publication of the *Initiation Notice*. *See Initiation Notice*, 76 FR at 23560. We received no comments from interested parties concerning product coverage. The Department also set aside a period of time for parties to comment on product characteristics for use in the antidumping duty questionnaire. *See Initiation Notice*, 76 FR at 23560. On May 10, 2011, we received comments from the petitioner. On May 17, 2011, we received comments from Precision Fasteners LLC (Precision Fasteners), a UAE producer and exporter of subject merchandise. On May 24, 2011, we received additional comments from the petitioner. After reviewing all comments, we have adopted the characteristics and hierarchy as explained in the “Product Comparisons” section of this notice, below.

On May 19, 2011, we selected Dubai Wire FZE (Dubai Wire), Precision Fasteners, and Tech Fast International Ltd. (Tech Fast), as mandatory respondents in this investigation. *See the “Selection of Respondents” section of this notice, below.*

On May 20, 2011, the International Trade Commission (ITC) published its affirmative preliminary determination that there is a reasonable indication that imports of nails from the UAE are materially injuring the U.S. industry, and the ITC notified the Department of its finding. *See Certain Steel Nails From the United Arab Emirates; Determination, Investigation*

No. 731-TA-1185 (Preliminary), 76 FR 29266 (May 20, 2011).

On May 26, 2011, we issued the antidumping questionnaire to Dubai Wire, Precision Fasteners, and Tech Fast. We received questionnaire responses from Dubai Wire and Precision Fasteners. We did not receive a questionnaire response from Tech Fast.

On July 20, 2011, based on a timely request from the petitioner, we extended the deadline for alleging targeted dumping.

On August 8, 2011, the petitioner filed allegations of targeted dumping by Dubai Wire and Precision Fasteners. *See* the “Allegation of Targeted Dumping” section below.

On August 8, 2011, the petitioner requested that the Department postpone its preliminary determination by 50 days. In accordance with section 733(c)(1)(A) of the Act, we postponed our preliminary determination by 50 days. *See Certain Steel Nails From the United Arab Emirates: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 76 FR 52313 (August 22, 2011).

On October 4, 2011, Dubai Wire and Precision Fasteners requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month to a six-month period.

On October 13, 2011, the petitioner submitted comments with respect to Dubai Wire and Precision Fasteners for consideration in the preliminary determination. On October 18, 2011, Dubai Wire submitted rebuttal comments. On October 21, 2011, Precision Fasteners submitted rebuttal comments. On October 24, 2011, the petitioner submitted additional comments with respect to Dubai Wire. On October 25, 2011, Precision Fasteners submitted additional

comments concerning targeted dumping allegation.

Period of Investigation

The POI is January 1, 2010, through December 31, 2010. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2011. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are nails from the UAE. For a full description of the scope of the investigation, as set forth in the *Initiation Notice*, please see the “Scope of the Investigation” in Appendix I of this notice.

Changes to the Scope of Investigation

For this preliminary determination we are clarifying the scope of investigation to conform with the decision in *Certain Steel Nails From the People’s Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 76 FR 22369 (April 21, 2011) (*China Nails CCR*) (unchanged in *Certain Steel Nails From the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 76 FR 30101 (May 24, 2011)). The scope description in the *Initiation Notice* included language referring to the packaging characteristics of certain nails excluded from the scope. However, in *China Nails CCR*, we determined that the physical characteristics of the nails, and not the labeling, were determinative of their inclusion or exclusion from the scope. *See China Nails CCR*, 76 FR 22371. Accordingly, we are revising the scope of this investigation by removing the following language pertaining to three types of roofing nails that are excluded from the scope of the investigation, “and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails.” *See* Appendix II of this notice.

Additionally, for the preliminary determination, we are modifying the scope of the investigation to reflect the ASTM Standard F 1667 (2011 revision) rather than the 2005 revision because the 2011 revision describes additional types of roofing nails not provided for in the 2005 revision. Accordingly, for this preliminary determination, we have adopted the following revision to the scope language, “Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.” *See* Appendix II.

We invite interested parties to comment on these modifications to the scope of this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. The data on the record indicates that there are over 10 potential producers or exporters from the UAE that exported the subject merchandise to the United States during the POI. *See* letter to all interested parties dated May 2, 2011. In the *Initiation Notice* we stated that we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the Harmonized Tariff Schedule of the United States (HTSUS) numbers 7317.00.55, 7317.00.65, and 7317.00.75, the three categories most specific to subject merchandise, for entries made during the POI. *See Initiation Notice*, 76 FR 23563. We invited comments on CBP data and selection of respondents for individual examination. *Id.*

On May 2, 2011, we released the CBP data to all parties with access to information protected by administrative protective order. Based on our review of the CBP data and our consideration of the comments we received from Dubai Wire on May 5, 2011, and from the petitioner on May 9, 2011, we determined that we had the resources to examine three companies. Accordingly, we selected Dubai Wire, Precision Fasteners, and Tech Fast¹ for individual examination in this investigation. These companies are the three producers/exporters of subject merchandise that account for the largest volume of the subject merchandise imported during the POI that we can reasonably examine in accordance with section 777A(c)(2)(B) of the Act. *See* Memorandum to Christian Marsh entitled “Certain Steel Nails from the United Arab Emirates: Selection of Respondents for Individual Examination” dated May 19, 2011.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Tech Fast.

A. Use of Facts Available

As indicated in the “Background” section above, Tech Fast did not respond to our questionnaire dated May 26, 2011. *See* memorandum dated October 18, 2011 (documenting our attempts to deliver the questionnaire to Tech Fast). As such, Tech Fast withheld information necessary to calculate a margin for its sales to the United States. Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,

¹ Selected respondents are listed in alphabetical order.

significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

In this case, Tech Fast did not respond to our request for information, withheld information the Department requested, and significantly impeded the proceeding. Because Tech Fast failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to section 776(a) of the Act, we are relying upon facts otherwise available for Tech Fast's antidumping duty margin.

B. Application of Adverse Inferences for Facts Available

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002). In addition, the Statement of Administrative Action

accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA), explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870; and, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007). Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003). It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.

Although we provided Tech Fast with notice informing it of the consequences of its failure to respond fully to our antidumping questionnaire, Tech Fast refrained from participating in this investigation and has failed to provide any response to our request for information. This failure to respond indicates that Tech Fast has determined not to cooperate with our requests for information or to participate in this investigation. Tech Fast’s decision not to participate in this investigation has precluded the Department from performing the necessary analysis and verification of Tech Fast’s questionnaire responses required by section 782(i)(1) of the Act. Accordingly, the Department concludes that Tech Fast failed to cooperate to the best of its ability to comply with a request for information by the Department pursuant to section 776(b) of the Act.

Based on the above, the Department has preliminarily determined that Tech Fast has

failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR at 42986 (July 12, 2000) (where the Department applied total adverse facts available (AFA) where the respondent failed to respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the SAA at 868-870. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. Normally, it is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). The rates in the petition range from 61.54 percent to 184.41 percent. *See Initiation Notice* at 23563. Because the rates we preliminarily determined for cooperative respondents, Dubai Wire and Precision Fasteners, are 27.02 and 18.09, respectively, we have selected the petition rate of 61.54 percent. This rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to

ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. *See Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

When using facts otherwise available, section 776(c) of the the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. The SAA clarifies that “corroborate” means the Department will satisfy itself that the secondary information to be used has probative value. *See SAA at 870. As stated in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department’s regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See 19 CFR 351.308(d) and the SAA at 870.*

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our

pre-initiation analysis and for purposes of this preliminary determination. *See* Antidumping Investigation Initiation Checklist dated April 20, 2011 (Initiation Checklist), at 5 through 14. *See* also *Initiation Notice* at 23561-23563. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the Export Price (EP) and normal-value calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the EP and normal-value calculations used in the petition to derive estimated margins. *Id.*

Based on our examination of the information, as discussed in detail in the Initiation Checklist and the *Initiation Notice*, we consider the petitioner's calculation of the EP and normal-value to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine that the margins in the petition are reliable for the purposes of this investigation.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic

business expense resulting in an unusually high margin).

The rates in the petition reflect commercial practices of the nails industry and, as such, are relevant to Tech Fast. The courts have acknowledged that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry. *See, e.g., Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (1999). Such consideration typically encompasses the commercial behavior of other respondents under investigation and the selected AFA rate is gauged against the margins we calculate for those respondents. Therefore, we compared the model-specific margins we calculated for Dubai Wire and Precision Fasteners for the POI to the petition rate of 61.54 percent, selected as AFA in this investigation. We found that the highest model-specific margins we calculated for Dubai Wire and Precision Fasteners in this investigation were higher than or within the range of the 61.54 percent margin alleged in the petition.

Specifically, after calculating the margin for Dubai Wire and Precision Fasteners as discussed in detail below, we examined individual model comparisons made by Dubai Wire and Precision Fasteners during the POI and the margins we determined on those model comparisons in order to determine whether the rate of 61.54 percent is probative. We found a number of model comparisons with dumping margins above the rate of 61.54 percent and a number of model comparisons with dumping margins within the range of 61.54 percent. See company-specific analysis memorandum, dated concurrently with this notice. Accordingly, the AFA rate is relevant as applied to Tech Fast for this investigation because it falls within the range of model-specific margins we calculated for Dubai Wire and Precision Fasteners in this investigation. A similar corroboration methodology has been upheld by the court. *See PAM*,

S.p.A. v. United States, 582 F.3d 1336, 1340 (Fed. Cir. 2009). Further, it is consistent with our past practice. *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808, 41811 (July 19, 2010).

Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondent in this investigation, we have corroborated the AFA rate of 61.54 percent “to the extent practicable” as provided in section 776(c) of the Act. *See also* 19 CFR 351.308(d).

Therefore, with respect to Tech Fast, we have used, as AFA, the margin in the petition of 61.54 percent, as set forth in the notice of initiation. *See Initiation Notice* at 23563.

Affiliation and Collapsing

Section 771(33)(F) of the Act defines affiliated persons as two or more persons directly or indirectly controlling, controlled by, or under common control with any person. We find that, based on record evidence, Dubai Wire and Global Fasteners Limited (GFL), a producer of screws, are affiliated pursuant to section 771(33)(F) of the Act. Because our analysis of affiliation involves extensive use of business-proprietary information, for a detailed discussion, *see* Memorandum to Susan Kuhbach entitled “Certain Steel Nails from the United Arab Emirates – Whether Collapsing of Affiliated Producers is Warranted,” dated October 27, 2011 (Collapsing Evaluation Memo).

Section 351.401(f) of the Department’s regulations outlines the criteria for collapsing (*i.e.*, treating as a single entity) affiliated producers for purposes of calculating a dumping margin. The regulations state that we will treat two or more affiliated producers as a single entity where (1) those producers have production facilities for similar or identical products that

would not require substantial retooling of either facility in order to restructure manufacturing priorities and (2) we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the Department may consider the following factors: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. *See* 19 CFR 351.401(f)(2).

With respect to the first criterion of 19 CFR 351.401(f), the information on the record indicates that GFL does not produce and/or have the potential to produce merchandise identical or similar to subject merchandise. Specifically, in producing screws, GFL's production processes and equipment are not similar to those used by Dubai Wire to produce nails. Thus, we find that substantial retooling of GFL's facilities would be required to change the companies' manufacturing priorities. *See* Collapsing Evaluation Memo. Because the first criteria of 19 CFR 351.401(f) was not established, we need not consider whether there is a significant potential for the manipulation of price or production.

With respect to Precision Fasteners, we find that, based on record evidence, it is not affiliated with Millennium Steel and Wire LLC. Because our analysis of affiliation involves extensive use of business-proprietary information, for a full discussion, *see* Precision Fasteners analysis memorandum.

Allegation of Targeted Dumping

The statute allows the Department to employ the average-to-transaction margin-

calculation methodology under the following circumstances: (1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

On August 8, 2011, the petitioner submitted allegations of targeted dumping with respect to Dubai Wire and Precision Fasteners, asserting that the Department should apply the average-to-transaction methodology to all reported U.S. sales in calculating the margins for these companies. In its allegations, the petitioner asserts that there are patterns of EPs for comparable merchandise that differ significantly among purchasers, regions, and periods of time. The petitioner relied on the Department's current version of the targeted-dumping test first introduced in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (*Nails*), and used more recently in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) (*OCTG*).

Because our analysis includes business-proprietary information, for a full discussion see Memorandum to Christian Marsh entitled "Less-Than-Fair-Value Investigation on Certain Steel Nails from the United Arab Emirates: Targeted Dumping – Dubai Wire FZE," dated October 27, 2011, and Memorandum to Christian Marsh entitled "Less-Than-Fair-Value Investigation on Certain Steel Nails from the United Arab Emirates: Targeted Dumping – Precision Fasteners, LLC" dated October 27, 2011, (Targeted-Dumping Memos).

A. Targeted-Dumping Test

We conducted customer, region, and time-period analyses of targeted dumping for both companies using the methodology we adopted in *Nails* as modified in *Bags*,² to correct a ministerial error, and as further modified in *Wood Flooring*,³ to correct for additional ministerial errors.

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. *See* section 777A(d)(1)(B)(i) of the Act and *Nails*. In this test we made all price comparisons on the basis of identical merchandise (*i.e.*, by control number or CONNUM). The test procedures are the same for the customer, regional, and time-period allegations of targeted dumping. We based all of our targeted-dumping calculations on the U.S. net price which we determined for U.S. sales by Dubai Wire and Precision Fasteners in our standard margin calculations. For further discussion of the test and the results, see the Targeted-Dumping Memos.

As a result of our analysis, we preliminarily determine that there is a pattern of EPs for comparable merchandise that differ significantly among certain customers, regions, and time periods for Dubai Wire and Precision Fasteners in accordance with section 777A(d)(1)(B)(i) of the Act and our practice as discussed in *Nails*.

Dubai Wire submitted comments arguing that there was no targeted dumping.

Dubai Wire's comments were filed a short period of time prior to the preliminary determination

² *See Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 55183 (October 27, 2009) (test unchanged in *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010)) (*Bags*).

³ *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring*) and accompanying Issues and Decision Memorandum at Comment 4. *See also* Targeted-Dumping Memos for more detail.

and were complex and extensive in nature. Accordingly, there has been insufficient time for interested parties to comment and for us to analyze the comments fully. We will consider Dubai Wire's comments in the context of the final determination.

B. Price Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the normal value to EPs or constructed export prices (CEPs) of individual transactions for comparable merchandise if the Department explains why differences in the patterns of EPs and CEPs cannot be taken into account using the average-to-average methodology. As described above, we have preliminarily determined that, with respect to sales by Dubai Wire and Precision Fasteners applicable to certain customers, regions, and time periods, there was a pattern of prices that differ significantly. We find, however, that these differences can be taken into account using the average-to-average methodology because the average-to-average methodology does not mask differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. *See* Section 777A(d)(1) of the Act. Therefore, for the preliminary determination, we find that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is not meaningful relative to the size of the resulting margin. *See* SAA, H.R. Doc. 103-316, vol. 1 (1994), at 843. Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all U.S. sales. *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24885, 24888 (May 6, 2010) and *Polyethylene Retail Carrier Bags*

From Indonesia: Final Determination of Sales at Less Than Fair Value, 75 FR 16431 (April 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

Date of Sale

The regulation at 19 CFR 351.401(i) states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

Record evidence indicates that for certain sales made by Dubai Wire, shipment date preceded the invoice date. Therefore, for such sales we used the shipment date as the date of sale in accordance with our practice.

Fair Value Comparisons

To determine whether sales of nails to the United States by Dubai Wire and Precision Fasteners were made at LTFV during the POI, we calculated EPs and normal values, as described in the "U.S. Price" and "Normal Value" sections of this notice. As described in the

“Allegation of Targeted Dumping” section, above, we made the comparisons of average EPs to normal value, based on constructed value, for all of Dubai Wire’s and Precision Fasteners’ reported sales and provided offsets for any non-dumped comparisons.

Product Comparisons

We have relied on 10 criteria for matching U.S. sales of subject merchandise to normal value: nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, and heat treatment.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for Dubai Wire’s and Precision Fasteners’ U.S. sales where the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation. We calculated EP based on the packed “Free-on-Board,” Cost and Freight,” or “Delivered, Duty Paid,” price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. See company-specific analysis memorandum, dated concurrently with this notice.

Normal Value

A. Comparison-Market Viability

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price. Section 773(a)(1)(C) of the Act contemplates that quantities (or values) will normally be considered

insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating normal value, we compared each respondent's volume of home-market and third-country sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. For both Dubai Wire and Precision Fasteners, aggregate volumes of sales of foreign like product in the home market or in the third-country markets were not greater than five percent of each company's sales of subject merchandise to the United States. Therefore, neither company's sales in the home market or in the third-country markets are viable as a comparison market. Consequently, we based normal value on constructed value for both companies.

B. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value because neither company had a viable comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative (G&A) expenses, interest expenses, U.S. packing expenses, and profit in the calculation of constructed value. We relied on respondents' submitted materials and fabrication costs, G&A, interest expenses, and U.S. packing costs, except where noted below. Based on our examination of record evidence, Dubai Wire and Precision Fasteners did not appear to experience significant changes in the cost of manufacturing during the period of investigation. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

For Dubai Wire, we reallocated fixed overhead to products by calculating a new fixed overhead ratio and multiplying this ratio by the reported direct labor and variable overhead of each product. We calculated G&A expenses for Dubai Wire on an unconsolidated basis. We analyzed the interest expense for loans between Dubai Wire and its affiliate under the “transactions disregarded rule” of section 773(f)(2) of the Act, and determined that the loans were not at arm’s length rates. As a result, we included an imputed interest expense amount associated with the non-arm’s length affiliated party loans.

For Precision Fasteners, we reallocated the reported direct material costs to products by weight-averaging the reported direct material by steel type and surface finish to alleviate the issue of cost differences unrelated to differences in physical characteristics. We reallocated fixed overhead to products using the ratio of fixed overhead costs to the reported direct labor and variable overhead costs. For additional details on these adjustments, see memorandum to Neal Halper from James Balog (Precision Fasteners) or Gary Urso (Dubai Wire), entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination” dated concurrently with this notice (Preliminary Determination Cost Calculation Memos).

Because Dubai Wire and Precision Fasteners did not have a viable comparison market, we did not determine selling expenses and profit under section 773(e)(2)(A) of the Act, instead relying on 773(e)(2)(B) of the Act. The statute does not establish a hierarchy for selecting among the alternative methodologies provided in section 773(e)(2)(B) of the Act. *See* SAA at 840. Section 773(e)(2)(B)(iii) of the Act specifies that profit and selling expenses may be calculated based on any other reasonable method as long as the result is not greater than the amount realized by exporters or producers “in connection with the sale, for consumption in the

foreign country, of merchandise that is in the same general category of products as the subject merchandise” (*i.e.*, the profit cap).

For both Dubai Wire and Precision Fasteners, we used the profit rate derived from the publicly available financial statements for the fiscal year most contemporaneous with the POI for a company in the United Arab Emirates, Arab Heavy Industries. See Exhibit 14 of April 11, 2011, supplement to the petition. This company produces products in the same general category of merchandise as nails. Further, because this source of information did not provide enough detail to calculate selling expenses for Dubai Wire and Precision Fasteners, we used the companies’ respective company-wide selling-expense rates. See company-specific analysis memorandum. We find that, absent alternatives, this approach satisfies sufficiently the criteria of section 773(e) because the selling expenses were derived for subject merchandise as well as for products in the same general category as subject merchandise.

In the instant case, the profit cap cannot be calculated using the available data because we do not have sales in the same general category that would result in a profit cap that is reflective of sales in the foreign country. Specifically, it is not clear whether the Arab Heavy Industries financial statement includes only sales in the foreign country. Therefore, because there is no other information available on the record, as facts available, we are applying option (iii) of section 773(e)(2)(B) of the Act, without quantifying a profit cap.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance-of-sale differences. We calculated constructed value without regard to level of trade with respect to EP sales because neither company had a viable comparison market.

Currency Conversion

It is our normal practice to make currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information relied upon in making our final determination for Dubai Wire and Precision Fasteners.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct CBP to suspend liquidation of all entries of nails from the UAE that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated below, as follows: (1) the rates for Dubai Wire, Precision Fasteners, and Tech Fast will be the rates we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 23.48 percent, as discussed in the “All-Others Rate” section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

<u>Manufacturer/Exporter</u>	<u>Weighted-Average Margin (Percent)</u>
Dubai Wire FZE	27.73
Precision Fasteners LLC	19.23
Tech Fast International Ltd.	61.54

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. Dubai Wire and Precision Fasteners are the only respondents in this investigation for which we calculated a company-specific rate that is not zero or *de minimis* or determined entirely under Section 776 of the Act. Therefore, because there are only two relevant weighted-average dumping margins for this preliminary determination and because using a weighted-average risks disclosure of business proprietary information of Dubai Wire and Precision Fasteners, the “all-others” rate is a simple-average of these two values, which is 23.48 percent. *See Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value*, 75 FR 60723, 60724 (October 1, 2010).

Disclosure

We will disclose the calculations performed in our preliminary determination to interested parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. If the Department’s final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of nails from the UAE are materially injuring, or threatening material injury to, the U.S. industry (see section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the

publication of this preliminary determination, as discussed below, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. *See* 19 CFR 351.309(c)(2). Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party. *See* also 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for filing a rebuttal brief. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be

held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. *See* 19 CFR 351.310(d).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 4, 2011, Dubai Wire and Precision Fasteners requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, these companies requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month to a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the *Federal Register*. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the
Act.

Paul Piquado
Assistant Secretary
for Import Administration

__October 27, 2011__
Date

Appendix I

Scope of the Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this investigation are the following products:

- non-collated (*i.e.*, hand-drive or bulk), two-piece steel nails having plastic or steel washers (“caps”) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;
- wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual

length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive, and whose packaging and packaging marking are clearly and prominently labeled “Roofing” or “Roof” nails;

- corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side;
- thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

Scope of the Investigation

The merchandise covered by this investigation includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

Certain steel nails subject to this investigation are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75.

Excluded from the scope of this investigation are steel nails specifically enumerated and identified in ASTM Standard F 1667 (2011 revision) as Type I, Style 20 nails, whether collated or in bulk, and whether or not galvanized.

Also excluded from the scope of this investigation are the following products:

- non-collated (*i.e.*, hand-drive or bulk), two-piece steel nails having plastic or steel washers (“caps”) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500” to 8”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual washer or cap diameter of 0.900” to 1.10”, inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 4”, inclusive; an actual shank diameter of 0.1015” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive;
- wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500” to 1.75”, inclusive; an actual shank diameter of 0.116” to 0.166”, inclusive; and an actual head diameter of 0.3375” to 0.500”, inclusive;
- non-collated (*i.e.*, hand-drive or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75” to 3”, inclusive; an actual shank diameter of 0.131” to 0.152”, inclusive; and an actual head diameter of 0.450” to 0.813”, inclusive;
- corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp

points on one side;

- thumb tacks, which are currently classified under HTSUS 7317.00.10.00;
- fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30;
- certain steel nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive; and
- fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.